lar case an unjust judgment has been given. A man has lost property for a claim which later turns out to be unfounded, and, to enable him to recover his property, a collateral attack has been sustained without any very cogent reason. On the other side the reasons against holding mere defects jurisdictional are: departures rarely prejudice, and in such cases the party is sufficiently protected by the right to object at once, and if ruled against on his objection he may appeal; holding departures jurisdictional offers an inducement to the opposite party not to defend on the merits, but to rely on defeating the judgment collaterally on technical grounds; a judgment sustaining the proceeding is itself an adjudication that the form is sufficient, and therefore the question is not open for debate; decisions of this kind tend to hinder execution sales by destroying confidence in the title to the property sold. Because the statute provides that a thing must be done in a certain manner, it does not follow that if done otherwise the proceeding is void. A better construction is that the party benefited by having it done so, shall have a right to insist upon it, or be sustained in an appeal or motion to vacate if it is not done. But if he submits he should be bound.

MARRIAGE—ANNULMENT—AGE OF CONSENT.—Petitioner was married to defendant when he was seventeen years and ten months old. One month later he brought this action seeking an annulment of the marriage. The age of consent having been fixed by statute at sixteen years in females and eighteen years in males, the legislature, in 1907, passed a divorce act, among the provisions of which was the following: "Decrees of nullity of marriage may be rendered in all cases * * * VI.—At the suit of a husband when he was under eighteen years of age at the time of the marriage unless it has been confirmed by him after arriving at such age." P. L. 1907, p. 74. *Held,* that the petitioner could not disaffirm the marriage until after he had reached the age of eighteen. *Palmer* v. *Palmer* (N. J. Eq. 1911) 80 Atl. 486.

In arriving at the conclusion which he has announced as the decision of the court in this case, HOWELL, V. C., has studiously followed the common law doctrine on the point, contrary to two *dicta* of the same court and to the only American decision on the point. He has justified his view on the ground that the statute in raising the ages of consent from twelve and fourteen years, has in no other way changed the common law rule. Says COMYNS in his DIGEST OF THE COMMON LAW, Vol. 2, p. 199: "A disagreement to the marriage before the age of consent is of no force." On the point he cites 1 Rol. 340, L. 50. SIMPSON, INFANTS, 83, announces practically the same view, citing COKE ON LITTLETON, § 105. This court discards as not in point, two New Jersey cases containing *dicta* exactly opposed to the view which the court now takes. In *Titsworth* v. *Titsworth,* 78 N. J. Eq. 47, 78 Atl. 687, in which the issue was on the effect of such an annulment on the legitimacy of children born previous to annulment, the court said: "It will be optional with the husband alone to affirm or disaffirm the marriage when he shall reach the age of eighteen or at any time before." In *Williams* v. *Brokaw,* 74 N. J. Eq. 561, 70 Atl. 665, the issue was on the retroactive effect of the statute and the court stated incidentally that hereafter an infant might annul at will. The

only American case involving the same question is *Eliot* v. *Eliot,* 77 Wis. 634, 46 N. W. 806, 10 L. R. A. 568. There the court rendered a decision directly opposed to the one here, saying: "If the plaintiff has capacity to become a party to such an imperfect and inchoate or conditional marriage he should have capacity to disaffirm it any time thereafter before it has ripened into an absolute marriage, by invoking the authority of the court to annul it under the statute." It is possible however that this decision may have been influenced a bit by a provision in the court rules for, continuing, the court says: "Again rule XXIX recognizes the plaintiff's capacity to maintain an action before he reaches that age by prescribing what the complaint shall contain if the action is thus brought." In the principal case the court cites as analagous the case of an infant's purchase of chattels, stating the law to be that such a purchase cannot be disaffirmed until majority. The analogy is proper enough, but it is opposed to the court's decision, for it is almost universally held that a purchase of goods can be avoided by the infant before he attains his majority. *Gillis* v. *Goodwin,* 180 Mass. 140; *International Text Book Co.* v. *McKone,* 133 Wis. 200; *Wuller* v. *Chuse Grocery Co.,* 241 Ill. 398.

MUNICIPAL CORPORATIONS—RIGHT OF INDEMNITY FOR DAMAGES CAUSED BY DEFECTIVE SIDEWALK.—Plaintiff municipality had been compelled to pay damages to one injured because of a defective sidewalk, and sought indemnity against the abutting property owner. The local ordinance provided that it should be the duty of such owner to keep sidewalks in repair, and if he fail, he should be given official notice to repair, and if he still fail to repair within forty-eight hours after such service of notice, it was the duty of the burgess to repair same and charge the expenses, plus twenty percent, against the property. Such notice had been served two months before the accident complained of, and neither the owner nor the municipality had repaired the defect. Defendant maintained that this constituted such contributory negligence and neglect of duty on the part of the municipality as to destroy any right of indemnity it might otherwise have had. *Held,* the owner of the property was primarily liable, and the city's failure to repair did not constitute such contributory negligence as to bar an action for indemnity. *Ashley Borough* v. *Lehigh & Wilkes-Barre Coal Co.* (Pa. 1911) 81 Atl. 442.

When a municipality pays damages for a nuisance or defects in a sidewalk, it is subrogated to the injured party's rights against the lot owner, and can recover against him. 4 DILLON MUN. CORP., Ed. 5, § 1728; *Porter* v. *Richardson,* 54 Me. 46; *Milford* v. *Holbrook,* 9 Allen 17; *Elkhart* v. *Wickwire,* 87 Ind. 77; *Taylor* v. *L. S. & M. S. Ry. Co.,* 45 Mich. 74. This general rule has been modified in the presence of statutes or ordinances like the one in the principal case. Under such ordinances, some courts have made a distinction between damage caused by wilful acts or negligence of the lot owner and damage resulting otherwise. In the former case, the city has a right of action over. *Rochester* v. *Montgomerey,* 72 N. Y. 65; *Robbins* v. *Chicago,* 4 Wall. 657, 18 L. Ed. 427; *Inhabitants of Lowell* v. *Boston & Lowell R. R. Co.,* 23 Pick. 24, 34 Am. Dec. 33. And there is no right of action over against the owner when no wilful act or negligence is shown. *Fulton* v.